will initiate and continue efforts in order to further the goals of universal service (Jt. Ex. 1, Attach. 1, at 7-8).

OCC witness Rafferty stated that the initiatives recommended by staff toward universal service are necessary. However, the witness went beyond the staff recommendation and advocated that the company should "ensure that basic services are affordable to low-income subscribers", because, in his view, the minimum program established by Section 4905.76, Revised Code, may not be sufficient when the company seeks alternative regulation (OCC Ex. 3, at 33). In OCC's view, this commitment is merely the company proposal to follow what the Ohio Revised Code already requires (OCC Brief at 72).

The goal of achieving universality for telecommunications is an issue in which the Commission has a great deal of interest. The stipulating parties' response to the Commission's concern in this area obligates the company to take certain actions in the furtherance of the provision of universal service. Although we do think that much more can be done by companies on this subject, given that this is the first alternative regulation case, we do not find that OCC's objections are sufficient to overturn the stipulation.

i. <u>Progress Reports</u>:

Section IV(B)(4) of the alternative regulation rules requires a company to file annual progress reports with the Commission, and serve such reports upon all parties to the alternative regulation proceeding. These progress reports are to include an evaluation of each commitment and a percentage of the completion achieved. Pursuant to the stipulated plan, Western Reserve will file annual progress reports with the Commission which will evaluate each commitment and report on the aggregate impact of the commitments near the end of the initial term of the plan (Jt. Ex. 1, Attach. 1, at 11).

OCC expressed its concern that the stipulated plan did not specifically state that the progress reports will be served upon the parties to the alternative regulation case. Furthermore, OCC believed that it is unclear what the format and contents of the reports will entail. In addition, OCC submitted that the stipulated plan lacks any mechanism for the enforcement of the commitments or overall monitoring of the results of the plan (OCC Brief at 53, 75). In the view of OCC witness Rafferty the implementation of a price cap plan, which OCC maintained includes the price freeze proposal set forth in the stipulated plan, requires increased attention to the quality of service. According to Dr. Rafferty, the inability to increase the nominal price of a service creates an incentive to reduce the services quality. Furthermore, a company operating under a price caps formula which is under pressure to maintain high earnings will cut cost and perhaps defer maintenance of the network. Dr. Rafferty advocates that a price cap plan "should have enforceable standards for observable qualities of service, with penalties to encourage compliance." (OCC Ex. 3, at 22-23).

The Commission fully intends to closely monitor the company's implementation and application of the commitments agreed to in the stipulated plan. Nothing in the stipulated plan precludes the Commission or our staff from obtaining whatever information the staff deems necessary and appropriate in order to monitor the implementation of the plan. Indeed, this is a nonnegotiable requirement of any alternative regulation plan pursuant to Section XVII of the alternative regulation rules. Furthermore, as pointed out by Western Reserve, Chapter 4901-1, O.A.C., requires the company to provide service of the progress reports filed in these cases on all parties of record in the cases (WR Reply Brief at 35). Thus, not only will the progress reports be filed in these cases and available to the public for review, but OCC, as well as all of the parties to these cases will be served copies of the progress reports. Thus, the Commission finds that OCC's concern pertaining to the progress reports and the service thereof is unfounded.

C. <u>Legal Issues and the Alternative Regulation Rules</u>:

1. <u>Subject Matter Jurisdiction</u>:

Section 4927.04(A), Revised Code, provides that, in considering an application filed by a telephone company pursuant to Section 4909.18 and 4909.19, Revised Code, for an increase in rates for basic local exchange service or any other public telecommunications service, the Commission may consider an alternative method of establishing rates.

Western Reserve CAPs maintained that the Commission has no subject matter jurisdiction to proceed lawfully under Section 4927.04(A), Revised Code. They argued that the stipulating parties have failed to identify the alternative method by which rates and charges are to be established pursuant to the applicable code section (WR CAPs Brief at 3).

Similarly, OCC averred that the stipulated plan does not qualify as an alternative regulation plan because it contains no increase in rates as contemplated by Chapter 4927 of the Revised Code. According to OCC, while increases resulting from the implementation of the pricing flexibility established by the Commission in 944/1144 are enough to involve Section IV(E) of the alternative regulation rules, such increases cannot be what the legislature intended in Section 4927.04(A), Revised Code, because such flexibility was permitted prior to the enactment of Chapter 4927, Revised Code (OCC Brief at 38). According to OCC, the mere fact that the stipulated plan freezes most rates and reduces a few others does not constitute an "alternative" to traditional regulation since Western Reserve's rates have been, in effect, frozen since 1986, when the company had its last rate case, and because the company has always had the power to reduce its rates in accordance with Section 4909.18, Revised Code (Id. at 39).

Western Reserve pointed out that the stipulated plan would reduce certain access rates, as well as other rates, and that the revenue neutral equalization of the intrastate carrier common line rates would increase the originating carrier common line. Thus, the company argued that the proposed stipulated plan and rate changes fall within the purview of Sections 4909.18 and 4909.19, Revised Code, which apply to applications to "establish any rate,...to modify,...increase,...or reduce any rate", as well as Section 4927.04, Revised Code, which applies when considering an application pursuant to the previously cited sections of the Ohio Revised Code (WR Brief at 53-54). In addition, the company pointed out that the Commission's jurisdiction under Section 4927.04, Revised Code, continues even if the ultimate conclusion of a case does not necessarily result in a rate increase, because this section of the Revised Code merely sets forth what the Commission may do when it is "considering an application" seeking an increase in rates. In the company's view, the Ohio General Assembly intended for the Commission to determine what the appropriate solution is to an alternative regulation proposal (WR Reply Brief at 31).

Contrary to the assertions made by the objecting parties, the Commission has clearly been empowered by the Ohio General Assembly with the authority to consider plans in the form agreed to by the stipulating parties in this case. We do, in fact, have the authority pursuant to Chapter 4927, Revised Code, and/or other applicable chapters found in Title 49 of the Ohio Revised Code, to review and approve the methodology espoused by the company and the other stipulating parties in this case. Furthermore, we find OCC's argument, that the company in some way failed to achieve a necessary statutory requirement for Commission review in this matter because the stipulated plan does not contain a proposed rate increase, to be incongruous with OCC's number one contention that the company should be decreasing it rates. Customers received many benefits under this plan (including Tel-Touch reductions, 1+ presubscription and ELCS) which might not have been possible to achieve only through prosecution of the OCC complaint case.

In our entry on rehearing in Case No. 92-1149-TP-COI at 4, we addressed the issue of whether a plan which does not include a provision for a rate increase can be filed pursuant to Section 4927.04(A), Revised Code. In that entry, we stated that "an alternative regulation plan, which may or may not include an increase in rates, should be filed pursuant to Section 4927.04(A), Revised Code." To require that the resolution of every application for alternative ratemaking must include a provision establishing a threshold rate increase would be contrary to the public interest, as well as our stated intention in formulating the alternative regulation rules in accordance with Chapter 4927, Revised Code. However, even if there was a statutory mandate that requests for alternative ratemaking contain a provision for an increase in rates, as pointed out by the company, the stipulated plan in this case would meet that mandate because, pursuant to the plan, not only would certain access and other rates be reduced, but the revenue neutral equalization of the intrastate carrier common line rates would increase the originating carrier common line charge. Accordingly, the Commission finds the arguments raised by OCC and the Western Reserve CAPS on this issue to be without merit.

2. Burden of Proof:

Pursuant to Section 4927.04(A), Revised Code, the Commission may approve rates for a service by a method other than that set forth in Section 4909.15, Revised Code, provided: the Commission finds the use of the alternative method of establishing rates is in the public interest; and, in instances where the alternative methodology is proposed by the Commission, that the applicant telephone company consents. Furthermore, Section I(B) of the Commission's alternative regulation rules places the burden to demonstrate that the plan is in the public interest on the applicant, Western Reserve.

At the hearing in this matter, the parties to the stipulation presented three witnesses in support of the stipulation: Mr. Cornacchione by Western Reserve; and Ms. Hensel and Mr. Montgomery by the staff. In addition, prefiled testimony addressing various aspects of the stipulated plan and the issues raised by the intervening parties which were signators to the stipulation was admitted into the record on behalf of the IXC coalition, Ohio Bell, AT&T, and OCTVA.

OCC and the Western Reserve CAPs both argued that the evidence of record is insufficient to support Western Reserve's burden of proof to show that the stipulated plan meets the requirements set forth in the alternative regulation rules and the Ohio Revised Code (OCC Brief at 4; WR CAPs Brief at 4). Furthermore, on brief, the Western Reserve CAPs pointed out that the testimony offered in support of the stipulated plan fails to address the objections to the staff report or the recommendations contained in the report (Tr. IX, 114).

OCC stated that the stipulated plan could be improved if certain objectionable features of the plan were deleted. Furthermore, OCC averred that, in order for the stipulated plan to be found to be in the public interest, there are additional features which would need to be included (OCC Brief at 54). In OCC's view, the stipulating parties failed to provide evidence in support of key portions of the stipulated plan. Furthermore, OCC maintained that what evidence was presented by the stipulating parties in support of some portions of the stipulated plan was "unconvincing" (Id. at 36). According to OCC witness Rafferty, the Commission may only adopt an alternative method of ratemaking if such alternative method is found to be in the public interest (OCC Ex. 3, at 4). OCC argued that Western Reserve and the other signatory parties to the stipulation bear the complete burden of showing that the stipulated plan is in the public interest. Furthermore, OCC maintained that the burden of proof does not shift just because a stipulation has been entered into (OCC Brief at 35). While OCC does not deny that the stipulation benefits some of the customers of Western Reserve, it believes that the "lack of supporting evidence for the allocation of the stipulation's benefits emphasizes the facial disproportionality of those benefits" (OCC Reply Brief at 2).

Dr. Rafferty, proposed four criteria which he believed the Commission should utilize in determining whether a plan is in the public interest: "(1) the certainty of lower rates and better service than traditional regulation maintains, (2) the assurance that lower costs will flow back to consumers, (3) the maintenance of universal service and affordable rates, and (4) the avoidance of any impediment to the entry and growth of efficient competitors." (OCC Ex. 3, at 9). According to OCC, Dr. Rafferty showed how a price-freeze plan, as presented by the stipulating parties, fails to meet the public interest when he explained that, "[a]lthough Western Reserve does not seek inflationary adjustments, it should continue to experience cost declines for its factor inputs - both in real terms and as adjusted for inflation. Where real productivity increases more than offset inflation, Western Reserve would restrict output by failing to pass on these cost reductions in lower prices to end users." (Id. at 11; OCC Brief at 40). OCC averred that, since Dr. Rafferty's recommendations are uncontroverted on the record and the stipulating parties have failed to identify other important factors in gauging an alternative regulation plan, the Commission cannot find that the stipulated plan is in the public interest based on this record (Id. at 41).

Western Reserve pointed out that, at the local public hearings, OCC stated that it finds nothing of real substance to oppose in the stipulated plan, rather, OCC does not believe that the plan goes far enough. The company and the other stipulating parties maintained that the stipulated plan does go far enough and that it meets all of the applicable statutory requirements (WR Brief at 4). In fact, Western Reserve pointed to testimony presented by witnesses for OCC in which the witnesses stated that features of the stipulated plan meet many of OCC's recommendations, namely Tel-Touch rate reductions, company assistance in the education commitment, continuation of flat-rate service, provision of the ALLTEL Customer Satisfaction Monitor, and deployment of ISDN technology based on customer demand (Tr. X, 15, 18, 43, 52, 84).

Western Reserve pointed to the diverse and comprehensive representation of the public interest represented by the stipulating parties, as well as the diverse benefits provided by the stipulated plan in advocating that the stipulated plan achieves the public interest objective. The company espoused that the stipulated plan provides direct benefits to all customers through reduced rates, elimination of the residential Tel-Touch charges, free calling to schools, the potential for ELCS in three areas, deployment of technology, customer surveys, enhancement of the universal service goal, and adoption of the staff's customer service recommendations (WR Brief at 57-59).

Upon careful consideration of the issues raised in opposition to the stipulation, along with the stipulated plan, the Commission firmly believes that the company and the stipulating parties have, in fact, sustained their burden of proof and have demonstrated that their resolution of the issues do meet the public interest mandate set forth in the alternative regulation rules, as well as the Ohio Revised Code. In contemplating the elements of the stipulation and the plan as a whole, it is evident that all of the customers of Western Reserve, including the residential customers which OCC represents, will be provided a direct benefit from the resolution of these matters. In fact, a review of the proposal in light of the four criteria which Dr. Rafferty advocated we utilize in determining whether the plan meets the public interest burden reveals that the stipulation, along with the plan, does attain his four stated goals.

Furthermore, as pointed out by staff on brief, the stipulated plan also has safeguards to protect the company. For example, if the stipulated return of rate base of 10.7 percent, which is within the range proposed by OCC, is found to be insufficient to permit an adequate return to the company's investors and, thus a threat to the company's financial stability, the exogenous factors provision is included in the plan in order to aid the company (Staff Brief at 17). Therefore, the public interest, which includes maintaining the financial ability of the company to maintain quality service and deploy technologies required by consumers is well served. Accordingly, we find that the concerns raised by the objecting parties on this issue are unfounded.

3. <u>Policy Objectives</u>:

As mentioned previously in the discussion section of this order, the legislature set forth a statement of policy in Section 4927.02, Revised Code, which the Commission is to consider in carrying out Sections 4927.03 and 4927.04, Revised Code. Generally, in approving a plan, the Commission is to consider five items, namely whether the plan: ensures adequate basic local exchange service; maintains just and reasonable rates; encourages innovation; promotes diversity and options; and recognizes the continuing emergence of competition.

In OCC's view, the legislature intended the policies set forth in Section 4927.02, Revised Code, to be a controlling part of the Commission's consideration of an alternative regulation plan and, thus, any plan which contradicts or fails to advance those policies should be rejected (OCC Brief at 41). Neither OCC witness Rafferty nor Western Reserve CAPs witness Selwyn believed that Western Reserve's initial plan met the statutory goals (OCC Ex. 3, at 6; WR CAPs Ex. 4, at 11). Furthermore, OCC argued that the stipulated plan is equally flawed (OCC Brief at 42).

With regard to the first statutory policy consideration pertaining to adequate service, OCC believes that the universal service commitment in the stipulated plan does little to advance the availability of basic service. In fact, OCC submitted that the price freeze structure of the stipulated plan actually gives the company "an incentive to allow service to become inadequate over the term of the plan" (OCC Brief at 42). On the second consideration, in Dr. Rafferty's opinion, the revenue reductions contained in the stipulation's complaint case recommendations do not result in just and reasonable rates (OCC Ex. 12, at 4-5). Thus, in OCC's view, the stipulated price freeze simply maintains rates which are unjust and unreasonable (OCC Brief at 42). With regard to the third consideration, OCC believes that the testimony of company witness Cornacchione, that the stipulated three-year term of the plan will encourage innovation and give the company incentive to become more efficient, is insufficient to meet the goal of this policy consideration (Tr. IX, 21). Similarly, OCC found company witness Cornacchione's identification of the intraLATA 1+ and the infrastructure commitment as specific sources of diversity deriving from the stipulated plan to be inadequate to meet the policy goal that the plan should promote diversity and options in the supply of services (Id. at 31; OCC Brief at 43). Finally, OCC maintained that the fifth statutory policy consideration was not met because the stipulated plan "does not provide for any flexible regulatory treatment of services", but only seeks the same flexibility that was permitted by the Commission prior to the enactment of Chapter 4927, Revised Code (Id. at 43).

According to the Western Reserve CAPs, the stipulation is a continuation of the status quo for a period of three years, at a time when the status quo is unacceptable according to both the policy of the state of Ohio and the alternative regulation rules. Western Reserve CAPs argued that the stipulation is bad for both the state of Ohio and the customers of the company (WR CAPs Brief at 12). According to the Western Reserve CAPs, while the company recognizes that subjects such as unbundling, interconnection, access to number resources, terminating compensation, access to directory assistance and other databases, and number portability are subjects which the company will need to address, those subjects are not included in the stipulated plan (Id. at 13; Tr. VIII, 15-16). However, the Western Reserve CAPs stated their support for the implementation of 1+ intraLATA access, as testified to by witness Selwyn, because it is "consistent with promoting the diversity in the supply of telecommunications service", as set forth in Section 4927.04(A)(4), Revised Code (WR CAPs Ex. 4, at 85-86; WR CAPs Reply Brief at 8).

Western Reserve stated that the legislature did not mandate that each of the policies set forth in the statute be fulfilled, but rather that the Commission take such policies into consideration when reviewing a plan. With regard to the policy objective pertaining to adequate service, Western Reserve maintained that it is currently providing such adequate service and that nothing on the record in these cases alleges otherwise. Furthermore, the company averred that its commitment to universal service will further the fulfillment of this policy. The company advocated that the commitments set forth in the stipulated plan will stimulate customers and the company, as well as the competitors, into thinking about ways to be innovative in the telecommunications industry. Furthermore, the company pointed to the portion of the stipulated plan establishing the intraLATA 1+ methodology as evidence of the plan's consideration of the policy concerning the recognition of emerging competition (WR Brief at 65-67).

Initially, we agree with the company that the legislature did not intend that the policy objectives set forth in the statute were mandated to be fulfilled word for word within the context of any approved alternative regulation plan. However, the statute does require that we consider the policy objectives set forth therein in arriving at our determination in a given case. Thus, in our review of the stipulation, along with the plan, we have carefully reviewed and considered all of the policy objectives in accordance with Section 4927.02, Revised Code, and we have found that the proposal under consideration today substantially achieves the considerations envisioned therein. We believe that, contrary to the position maintained by the Western Reserve CAPs, the stipulation taken as a whole goes well beyond the status quo. Rather, the numerous commitments set forth in the stipulated plan coupled with the rate adjustments and the implementation of intraLATA 1+ service result in a stipulation which attains the goals envisioned by the legislature when it enacted Chapter 4927, Revised Code. Accordingly, the allegations put forth by the objecting parties are found to be without merit.

4. <u>Waiver of the Alternative Regulation Rules</u>:

Section 4927.04(D), Revised Code, states that the Commission shall adopt such rules as it finds necessary to carry out this section of the code. Accordingly, the Commission created the alternative regulation rules which provide in Section I(D) that "[t]he Commission may waive any provision in these rules upon a motion for good cause shown, or upon its own motion." Furthermore, Section I(D)(1)(f) of the rules states that, in considering a request for waiver, the Commission may take into consideration whether the granting of the waiver would be in the public interest. The stipulation submitted in these cases includes a clause which provides that "to the extent necessary to effect the foregoing, any and all of the rules adopted by the Commission in Case No. 92-1149-TP-COI which are in conflict herewith be waived" (Jt. Ex. 1, at 3). Furthermore, the stipulated plan provides that provisions of the plan "shall control over current rules of the Commission which are expressly in significant conflict with the [p]lan...." (Id., Attach. 1, at 15). Pursuant to the directive of the attorney examiner, the company submitted a late-filed Western Reserve Exhibit 16 which identifies the rules that the stipulating parties believe are subject to the waiver provision contained in the stipulation.

OCC argued that a company must either follow the alternative regulation rules in its plan, request a waiver from the rules, or demonstrate that the application of the rule is not in the public interest (OCC Brief at 44). OCC opined that, even with the submission of Western Reserve Exhibit 16, the stipulating parties failed to meet their burden of proof concerning the requirements of the rules in seeking a waiver or have contradicted a rule in the stipulated plan in the following areas by failing to: meet the burden of proof; show good cause for the waivers to the rules; set forth record support for policy issues concerning cross-subsidization, achievement of the policy goals, resale and sharing, and the public interest; demonstrate that the commitments are consistent with the statute and Commission goals, and that they are in addition to the minimum telephone service standards; describe the method for earnings measurement; demonstrate that the stipulated plan is as beneficial for ratepayers as Section 4909.15, Revised Code; address seven of the eleven points which the Commission is to take into consideration when reviewing a plan as set forth in Section X(B)(2) of the rules; explain the inconsistency between the consent provision, as well as the provision concerning modification and revocation of the stipulated plan, and the provisions set forth in the rules; set forth a provision covering the filing of a subsequent plan; embody the protection provided by LRSIC studies in contractual arrangements; and failure to provide for customer education (Id. at 48).

The Western Reserve CAPs maintained that, in order for the Commission to consider any of the waiver requests submitted by the company and contained in Western Reserve Exhibit 16, the company would need to submit at least some explanation for the request; however, no such explanation has been provided concerning the waiver requests contained in the exhibit. Thus, the Western Reserve CAPs opined that the Commission must reject the blanket waiver proposal contained in the stipulated plan (WR CAPs Brief at 9).

Western Reserve viewed the alternative regulation rules as permissive in nature. Thus, it explained that the waivers set forth in Western Reserve Exhibit 16 extend primarily to language contained in the rules which are mandatory by their terms (WR Brief at 30). The company stated that the rules not identified in the request for waiver are either not in conflict with the stipulated plan, have already been observed in the stipulated plan, or will be observed during the initial term of the stipulated plan. For example, Sections III and IV of the alternative regulation rules set forth the required exhibits and components of a plan which must be contained in an application. The company pointed out that, in filing its initial plan, it submitted the requisite components and exhibits in accordance with these rules, thus, contrary to OCC's assertions, these rules are no longer applicable to the stipulated plan, "unless the Commission accepts that an application is immutable" (WR Reply Brief at 34).

The Commission fails to see merit in the concerns raised on the waiver issue by either OCC or the Western Reserve CAPs. Western Reserve Exhibit 16 clearly sets forth those procedural elements contained in the alternative regulation rules which the company is requesting waivers from in order to move forward with implementation of the stipulated plan. None of the requested waivers involve any due process elements. As agreed to by the company on brief, the rules not set forth in Western Reserve Exhibit 16 are either not in conflict, are observed in the plan, or will be observed during the term of the plan.

D. <u>IntraLATA 1+</u>:

Pursuant to the stipulation, Western Reserve will implement intraLATA 1+ capability by deploying the methodology known as modified 2 PIC within nine months of the issuance of the Commission's order in this case. The modified 2 PIC methodology permits customers of Western Reserve to select their interLATA toll carrier as their exclusive 1+ toll carrier, or they could retain the status quo whereby Ohio Bell carries all of the 1+ intraLATA toll calls and the customers' presubscribed 1+ interLATA toll carrier continues to carry the interLATA toll calls (Jt. Ex. 1, at 4-5). To implement this methodology, the procedures developed for intraLATA presubscription will be followed, with the exception of the balloting process. Thus, according to the company, the customers will incur no expense in their initial selection (WR Brief at 30). Western Reserve will recoup its 1+ intraLATA implementation costs by assessing the interexchange carriers a one-time access charge which will be allocated according to their respective market shares as determined by minutes of use. Pursuant to the stipulation, this assessment is not to exceed $175,000 (Jt. Ex. 1, at 5). Furthermore, IXC Coalition witness Gillan testified that intraLATA 1+ access will produce benefits to the customers of Western Reserve which will result in lower rates and reduced pressures to institute EAS (IXC Coalition Ex. 2, at 10-13).

The Commission notes that, other than OCC's disagreement with the methodology set forth in the stipulation, neither OCC nor the Western Reserve CAPs took issue with the implementation of 1+ intraLATA access as proposed by the stipulating parties. OCC witness Rafferty testified that, rather than the modified 2 PIC methodology contained in the stipulation, the end users should be balloted to permit them the option of selecting an intraLATA carrier different than either Ohio Bell or their presubscribed interLATA carrier (OCC Ex. 12, at 17). However, upon consideration of the proposal set forth by the stipulating parties, the Commission finds that OCC's objections are not so substantial as to result in overturning the stipulation.

Furthermore, we would note that our decision in this matter concerning the implementation of intraLATA 1+ is purely based on the facts presented in this case which are unique to Western Reserve. When faced with the ever-increasing competitive environment within the telecommunications industry, as well as the possibility that, as a secondary carrier to Ohio Bell, Western Reserve would have been charged pursuant to Ohio Bell's Schedule A rates for intraLATA toll calls, the Commission believes that the conversion to 1+ intraLATA access is reasonable. However, each case must be viewed based on its own set of facts and circumstances which is how the Commission will continue to evaluate similar requests on this issue.

Accordingly, in accordance with the stipulation, the company shall implement 1+ intraLATA access and Ohio Bell shall file an application to amend its tariff (ATA) establishing grandfathering and other changes to effectuate Ohio Bell's changed status as a toll provider outside of its local service area.

E. Commission Criteria:

Having determined that no party has raised any objection which would warrant rejection of the stipulation, the Commission must now determine whether the stipulation meets the previously adopted criteria regarding settlements.

The first criterion is that the settlement should be a product of serious bargaining among capable, knowledgeable parties. It is beyond dispute that the bargaining between the parties in this case was serious in both process and result. Settlement discussions preceded the commencement of the hearing and the prehearing conference. The Commission is aware that hearings in the matter were suspended in early December to permit the parties to continue settlement discussions. The result of these efforts is the stipulation filed on January 7, 1994. Further, the signatory parties clearly are capable, knowledgeable parties, well-versed in regulatory issues and represented by experienced counsel. These parties also represent a wide range of interests. The Commission finds that the stipulation is a product of serious bargaining among capable, knowledgeable parties.

The second criterion is that the settlement, as a package, should benefit ratepayers and the public interest. The resolution of the OCC complaint case embodied in the stipulation produces a result for Western Reserve's residential ratepayers which is no less favorable than that which would be justified if OCC were to prevail on the issue of the amount of Western Reserve's test-year excess earnings. Even if the Commission were to accept OCC witness Miller's determination that Western Reserve's test-year revenues exceeded its revenue requirements by $20.7 million, as opposed to the $18.7 million agreed to by the parties to the stipulation, there is not evidence in the record sufficient to demonstrate that such reductions should go to the residential class without consideration of the IXCs. The stipulated revenue reduction benefits all ratepayers by moving access rates toward cost without any corresponding increase in basic local service rates.

Other benefits have been previously discussed. Ohio Bell has offered the lower Schedule B rates to Western Reserve's customers for intraexchange toll service on a promotional basis during the pendency of this case and, pursuant to the stipulation, will continue to charge the Schedule B rate. Staff witness Montgomery estimated the annual benefit in toll rate reductions to Western Reserve's end users to be $2.2 million (Staff Ex. 5, at 2-3). Staff witness Montgomery also testified to other benefits that would result from the adoption of the stipulation. The $2.00 monthly rate for residential Tel-Touch service will be eliminated, and Western Reserve will also waive the charges associated with the conversions of the existing residential access lines to Tel-Touch. This will provide an immediate rate reduction of $2.00 per month to approximately 70 percent of Western Reserve's residential customers and will provide a higher level of service to other customers (Id. at 3-4). It will also make Western Reserve the first large local exchange company in the state to offer touch-tone service as a basic service at no additional cost. Western Reserve's customers will have the option to choose their interLATA toll carrier to carry their intraLATA calls on a 1+ basis. Another benefit to be provided is the implementation of no charge, one-way calling from the Western Reserve's local exchange to the elementary and secondary schools within the customers' local school districts. Basic local exchange rates for schools will also be reduced to generate $100,000 less in annual revenues.

Numerous other benefits are contained in the stipulation. Access charges will be reduced for the interexchange customers. Western Reserve will continue to make flat-rate, basic local exchange service available during the term of the plan. With the exception of the rates which will be reduced, the tariffed rates will be frozen during the duration of the plan. Another important benefit contained in the stipulation is Western Reserve's commitment to technology deployment. The stipulation also provides numerous benefits for the schools as well as the opportunity for the schools to make an intelligent choice when it comes to competing distance learning applications provided by local exchange companies, cable television operators, and competitive access providers.

As can be seen, based on the record and the Commission's discussion, the settlement clearly benefits ratepayers and the public interest. While the nonsignatory parties may believe that the alternative regulation plan recommended in the stipulation should incorporate additional or different features or commitments, this does not mean that the stipulation in not in the public interest. No plan will ever totally satisfy every party. However, this stipulation strikes a reasonable balance between the competing interests represented in these proceedings and is in the public interest.

The third criterion is that the settlement package should not violate any important regulatory principle or practice. While those who oppose the stipulation argue that the stipulation does violate regulatory principles and practice, based on our analysis of their objections discussed at length above, we find that it does not. The Commission concludes that the settlement package does not violate any important regulatory principle or practice.

In conclusion, the Commission finds that the settlement balances divergent interests and views and achieves a package which the Commission deems to be reasonable and supported by the record. The stipulation filed by the company, staff, IXC Coalition, Ohio Bell, AT&T, OCTVA, ODOE, and Bellcore should be adopted in its entirety. The Commission also believes that the parties should be commended for their tireless efforts to resolve these proceedings.

PROPOSED TARIFFS, CUSTOMER NOTICE, AND EFFECTIVE DATE

In accordance with the stipulation, the company filed on January 21, 1994, its proposed or revised tariff pages necessary to implement the terms of the stipulation. Further revised tariffs were filed on March 18, 1994. The Commission finds that the tariffs conform to this opinion and order and should be approved. The new tariffs shall be effective on and after the date the company files four complete printed copies of its tariffs. The plan should be implemented in accordance with the schedule set forth in the stipulation.

The company should file for Commission review a proposed customer notice advising its customers in sufficient detail about its new alternative regulation plan and its implications for customers. The notice should be filed within seven days of this opinion and order and will be subject to careful Commission review to ensure completeness and understandability. The Commission further authorizes the company to notify its customers of the alternative regulation plan by means of a bill insert in the normal cycle of billing.

FINDINGS OF FACT:

1) On August 26, 1992, the Office of the Consumers' Counsel filed a complaint, Case No. 92-1525-TP-CSS, against The Western Reserve Telephone Company alleging that Western Reserve's rates and charges are excessive under the ratemaking formula set forth in Section 4909.15, Revised Code. OCC requested that the Commission find that Western Reserve's base rates should be reduced.

2) On March 12, 1993, Western Reserve filed its application for approval of an alternative form of regulation, Case No. 93-230-TP-ALT.

3) By entry dated April 8, 1993, in Case No. 93-1525-TP-CSS, the Commission consolidated for hearing the complaint case and the alternative regulation case.

4) On January 7, 1994, a stipulation resolving the issues in both proceedings was filed by Western Reserve, the staff of the Public Utilities Commission of Ohio, The Ohio Bell Telephone Company, the IXC Coalition, AT&T Communications of Ohio, the Ohio Cable Television Association, the Ohio Department of Education, and Bell Communications Research. The stipulation is opposed by Western Reserve CAPs and OCC.

5) Local public hearings were held on January 25, 1994, in Morristown, Ohio; on January 26 and 27, 1994, in Austinburg, Ohio; and on January 27, 1994, in Macedonia, Ohio. Commissioners presided at each of the hearings. Evidentiary hearings were held in Columbus, Ohio, commencing on November 29, 1993, and concluding on February 10, 1994.

6) The stipulation is the product of serious bargaining among knowledgeable parties, benefits ratepayers and advances the public interest,

and does not violate any important regulatory principles or practices.

7) The rates, terms, and conditions set forth in the tariffs filed pursuant to the stipulation are consistent with this opinion and order.

CONCLUSIONS OF LAW:

1) The complaint in Case No. 92-1525-TP-CSS was filed pursuant to Section 4905.26, Revised Code. The company's application in Case No. 93-230-TP-ALT was filed pursuant to Section 4927.04(A), Revised Code. The company is subject to the jurisdiction of this Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

2) A staff investigation was conducted and a report duly filed and mailed, and public hearings have been held. Notice of the complaint, application, and hearing was published in accordance with Sections 4905.26, 4909.19, and 4903.083, Revised Code.

3) OCC has met its burden of proving that, since the company's last rate case, the company's revenues have increased and its expenses decreased, resulting in excess earnings of more than $10,000,000 annually and that the Commission should order reductions in rates to just and reasonable levels. OCC has not demonstrated that its proposed rate reductions are a just and reasonable remedy of the overearnings.

4) The rate reductions provided for in the stipulation are supported by the record, produce just and reasonable revenue reductions, and should be adopted.

5) The stipulated alternative regulation plan submitted by the parties is supported by the record and comports with the policy of this state set forth in Section 4927.02, Revised Code.

6) The stipulation submitted by the parties is reasonable, supported by the record, and should be adopted in its entirety.

7) The company should be authorized to withdraw its current tariffs and to file in final form four complete printed copies of its tariffs which the Commission has approved herein.

<u>ORDER</u>:

It is, therefore,

ORDERED, That the joint stipulation filed on January 7, 1994, in these proceedings is approved and adopted in its entirety. It is, further,

ORDERED, That the complaint in Case No. 92-1525-TP-CSS is granted, in part, and denied, in part, consistent with this opinion and order. It is, further,

ORDERED, That the application of The Western Reserve Telephone Company for approval of an alternative form of regulation is granted to the extent provided in this opinion and order. It is, further,

ORDERED, That Western Reserve's request in Case No. 94-99-TP-UNC for discontinuance of the mirroring of the interstate, traffic-sensitive access rates at the intrastate level established in Case No. 83-464-TP-COI (Subfile C) is granted and that Case No. 94-99-TP-UNC is closed of record. It is, further,

ORDERED, That the applicant provide for Commission review a proposed notice advising its customers about the approved alternative regulation plan within seven days of the date of this opinion and order. The company may provide the notification to its customers by means of a bill insert in its regular billing. It is, further,

ORDERED, That the proposed revised tariffs are approved, and the applicant is authorized to cancel and withdraw its present tariffs governing service to customers affected by this application. The effective date of the new tariffs shall be the date on which the company files in final form, four complete printed copies of its revised tariffs. One copy of the tariff should be filed in the company's TRF docket. The new rates should be implemented in accordance with the schedule set forth in the stipulation. It is, further,

ORDERED, That Conneaut, Orwell, United, AT&T, LCI, Allnet, MCI, and Sprint provide the requisite calling information to the company as set forth on page 39 of this opinion and order. It is, further, ORDERED, That Western Reserve file a tariff offering ISDN services within eight months of the date of this opinion and order. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record, Conneaut Telephone Company, Orwell Telephone Company, and United Telephone Company of Ohio.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer

Craig A. Glazer, Chairman

J. Michael Biddison

J. Michael Biddison

JoAnn Barry Butler

JoAnn Barry Butler

Richard M. Fanelly

Richard M. Fanelly

David W. Johnson

David W. Johnson

AKR/CMTP;geb

Entered in the Journal
MAR 30 1994

A True Copy

Gary E. Vigorito

Gary E. Vigorito
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of the Office of the Consumers' Counsel, on Behalf of the Residential Utility Customers of The Western Reserve Telephone Company, Complainant, v. The Western Reserve Telephone Company, Respondent.	Case No. 92-1525-TP-CSS
In the Matter of the Application of The Western Reserve Telephone Company for Approval of an Alternative Form of Regulation.	Case No. 93-230-TP-ALT

CONCURRING OPINION OF CHAIRMAN CRAIG A. GLAZER

I concur in the Commission's decision and write separately to make a number of observations.

In the first place, this is truly a landmark case. With the issuance of today's Opinion and Order, the Commission completes the first alternative regulation proceeding for a large local exchange company. Those who try to detract from the process or complain of its results ignore the significance of this result and all the hard work that went into reaching this day. What is most encouraging is that the majority of parties worked out their differences to bring the case to resolution.

Too often in these circumstances we all neglect to take time to thank those people who worked so hard at resolving what could have been a very contentious proceeding. At the outset, the Company should be commended for being the first to brave the waters of our new alternative regulation process. The Company did not need to file this case but could instead have just resorted to litigating the OCC complaint case in a traditional manner. The company's efforts to use the process to address an overearnings situation in a nontraditional way, by balancing rate reductions with new opportunities which will provide economic development benefits to the citizens of its service territory, deserves considerable credit. In a similar vein, Staff's efforts to bring all of the contentious parties together to hammer out an agreement is truly outstanding. It drives the kind of compromise and consensus building that avoids the litigious ways of the past. Finally, the participation and compromise by the other parties was critical to moving the process along. This was an extremely difficult case. By all the parties working with the Staff and with each other rather than against the Staff or any party, an agreement was reached, one which is in the best interests of the company and its customers and one which definitely furthers the goals of competition, diversity, reasonable basic rates and encouraging innovation and investment which are at the heart of Section 4927.02 of the Revised Code.

I would be remiss if I did not also comment on the considerable testimony raised at the public hearings in this case, particularly at the lengthy hearings in Ashtabula County. In one way, the spokespersons on Extended Area Service in Ashtabula County came very late to the process. This case was well publicized in the local newspapers for some time before the hearing and was even the subject of a prominent official notice in the regular section of the local newspaper outlining all of the issues. Earlier intervention and participation by the EAS spokespersons would have helped to focus everyone on this issue earlier on. Nevertheless, the Commission did hear the impressive public testimony on the EAS needs of Ashtabula County. It is for this reason that we are directing Western Reserve to file promptly company-initiated EAS cases on those routes where it is justified using the calling statistics which must guide our decision making. We also have ordered that the record of the hearings in this case be made part of future EAS proceedings so as to expedite any future EAS proceedings. That being said, EAS cannot be granted everywhere it is asked for. EAS is not free and it raises significant equity issues since customers who make few toll calls are asked to subsidize those who make many calls. It is for this reason that we utilize and weigh so heavily the calling statistics in our determinations since they are the only empirical measures we have available to us to weigh the degree of such cross-subsidy.

This case is unique in that the parties have stipulated to the introduction of 1+ toll competition in the Western Reserve area. This makes customers of Western Reserve the first in the state to have available to them 1+ options to use other long distance companies to complete these calls within the service territory. This will provide a significant level of relief for those areas where EAS is not justified.

I see this case as one where the appropriate balance was achieved---where justified, EAS is to be proactively initiated by the company, rather than forcing people to go through petitions and lengthy hearings. At the same time a competitive option is available in those places where there is not sufficient community of interest as measured by calling statistics to justify EAS. This combination appropriately balances the competing concerns which normally pit the interexchange carriers off against the local citizens in cases such as this. As such, it provides for a "win-win" which harmonizes the potentially conflicting goals set forth in Section 4927.02 of the Revised Code and as a result, is clearly in the public interest.

Craig A. Glazer, Chairman

CAG:th

Entered in the Journal
MAR 30 1994

A True Copy

Gary E. Vigorito
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of The Western Reserve Telephone Company and Ameritech Ohio for the Approval of One-Way, Extended Local Calling Service from the Aurora, Northfield, and Twinsburg Exchanges of The Western Reserve Telephone Company to the Akron Exchange of Ameritech Ohio.	)	Case No. 94-1103-TP-PEX

FINDING AND ORDER

The Commission finds:

1) On June 24, 1994, The Western Reserve Telephone Company (Western Reserve) and Ameritech Ohio (Ameritech) filed a joint application with the Commission, docketed as Case No, 94-1103-TP-PEX, pursuant to Rule 4901:1-7-05, Ohio Administrative Code (O.A.C.), seeking authority to provide one-way, nonoptional extended area service known as Extended Local Calling Service (ELCS) from the Aurora, Northfield, and Twinsburg exchanges of Western Reserve to the Akron Exchange of Ameritech. ELCS is a measured-rate extended area service (EAS) which provides discounts from current toll rates without increasing the present monthly local exchange service charge. This joint application is part of the plan filed by Western Reserve as part of the settlement in Case Nos. 92-1525-TP-CSS and 93-230-TP-ALT.

2) By Attorney Examiner's Entry issued July 18, 1994, it was determined that, due to the nature of the proposed service, because of the detailed information contained in the application, and because no entity had yet sought intervention in this proceeding, a public hearing was not necessary unless the Commission received a request for one from an affected subscriber. Legal notice of the pendency of this application was ordered to be made once a week for three consecutive weeks in newspapers of general circulation in the affected counties, on or before August 18,

1994. The Entry also provided any interested person an opportunity to request an oral hearing in this matter for good cause shown by filing a statement to that effect on or before September 1, 1994.

3) Generally, the joint application provides that:

a) The Twinsburg and Northfield exchanges are located within Summit County. The Aurora Exchange is located predominantly within Portage County with small portions extending into Summit and Geauga counties. The involved exchanges are not contiguous to each other.

b) According to the calling statistic information based on data submitted by AT&T and Sprint for October 1993 and MCI, Allnet, and LCI for March 1994, the calling rates are as follows:

Aurora to Akron	3.04
Northfield to Akron	4.21
Twinsburg to Akron	5.43

c) The proposed ELCS will not result in an increase in rates for the affected subscribers; therefore, no canvass would be required in order to institute the proposed service.

d) The joint applicants propose to implement this service within six months of all necessary approvals.

4) On September 1, 1994, Allnet Communications Services, Inc.,[1] AT&T Communications of Ohio, Inc., MCI Telecommunications Corporation, LCI International Telecom Corp., and LDDS Communications (collectively referred to as "the IXCs") filed comments and a statement of opposition to the joint application and, alternatively, a motion for leave to intervene in this proceeding. The IXCs allege that: (1) the IXCs stand to lose interLATA traffic between the telephone exchanges involved in this petition once measured-rate EAS has been

1. By letter filed November 15, 1994, Allnet Communications Services, Inc. withdrew as a party of record in this case.

implemented; (2) pursuant to Rule 4901:1-7, Ohio Administrative Code (O.A.C.), there is insufficient calling between the exchanges in this case to support flat-rate EAS and measured-rate EAS should not be implemented; and, (3) the Commission should reopen its Investigation Into The Continued Feasibility of Extended Area Service, Case No. 88-1454-TP-COI (88-1454), to restructure the EAS rules to eliminate measured-rate EAS as an option for areas with an insufficient community of interest to support flat-rate EAS. The IXCs also request that all currently pending EAS cases be held in abeyance until these issues are resolved. The IXCs state that they seek intervention into this proceeding as they have a substantial interest in this proceeding, and their views should be given consideration by the Commission. The IXCs also request, to the extent necessary, a hearing in this matter.

5) Responses to the IXCs' filing were filed by Western Reserve on September 16, 1994 and by Ameritech on September 22, 1994. Western Reserve contends that the joint application was submitted in accordance with the current Commission rules and precedent and the IXCs do not contend otherwise. Rather, the focus of the IXCs' position is that the current rules need to be changed. Further, according to Western Reserve, to change the current rules during this proceeding would deny them due process and work an arbitrary and unreasonable result.

Ameritech concurs in Western Reserve's response. Moreover, Ameritech asserts, the one-way EAS sought in this case was specifically contemplated by the Commission as part of the settlement in Western Reserve's alternative regulation proceeding.

6) Rule 4901-1-11(B), O.A.C., provides that, upon timely motion, any person may be permitted to intervene in a proceeding upon a showing that the person has a real and substantial interest in the proceeding. In deciding whether to permit intervention, the Commission may consider the nature of the person's interest, the extent to which the person's interest is represented by existing parties, the person's potential contribution to a just and expedi-

tious resolution of the issues, and whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party.

7) A review of the facts and pleadings in this case demonstrates that the IXCs have a real and substantial interest in this proceeding. As a result, the IXCs' motion to intervene should be granted.

8) The Commission has given careful consideration to the concerns raised by the IXCs, as well as the responses in reviewing this matter. With respect to the IXCs' request for a hearing in this matter, the Commission notes that the joint application in this case was contemplated in Western Reserve's alternative regulation plan and that the IXCs participated in the proceedings surrounding that plan and signed the stipulation approving the plan. To the extent that the IXCs had any issues specific to the EAS requested in this joint application which they wished to have presented at hearing, they had the opportunity to do so during the alternative regulation proceedings. Consequently, the IXCs' request for a hearing in this proceeding will be denied and the Commission will decide this case based on the record before us.

The IXCs have requested that the Commission consider the loss of toll traffic to them and the accompanying loss of revenue as a result of the implementation of measured-rate EAS. As with any EAS case, the Commission is aware that telephone companies will realize a loss of toll revenue if toll calls are no longer being made. The Commission took this fact into consideration in deciding this case.

With respect to the IXCs' request that the docket in 88-1454 be reopened, the Commission declines at this point to take such action. If the Commission determines that such an action is warranted, the Commission may reconsider the IXCs' request. Finally, with respect to the IXCs' request that all EAS cases be held in abeyance, the Commission declines to take such action at this time. If the Commission determines in the future that such action is warranted, we may reconsider the IXCs' request.

9) The joint applicants are telephone companies as defined in Section 4905.03(A)(2), Revised Code, and public utilities as defined in Section 4905.02, Revised Code. As such, the joint applicants are subject to the jurisdiction of the Commission under the authority of Sections 4905.04 and 4905.05, Revised Code.

10) Upon review of the various documents and supporting exhibits contained within the joint application, the Commission concludes that the joint applicants' request to establish one-way, nonoptional ELCS between the Aurora, Northfield, and Twinsburg exchanges and the Akron Exchange should be granted.

11) As the joint applicants are aware, ELCS between the Aurora, Twinsburg, and Northfield exchanges and the Akron Exchange will constitute interLATA traffic and will require a waiver form the United States District Court for the District of Columbia. Thus, Ameritech should petition the court for such a waiver and, upon receipt of the waiver, begin terminating the one-way, nonoptional ELCS from the Aurora, Twinsburg, and Northfield exchanges to the Akron Exchange.

It is, therefore,

ORDERED, That the IXCs' request to intervene is granted. It is, further,

ORDERED, That the IXCs' request for a hearing is denied. It is, further,

ORDERED, That the joint application seeking one-way, nonoptional Extended Local Calling Service from the Aurora, Northfield, and Twinsburg exchanges to the Akron Exchange is granted. It is, further,